

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY S D.C.
05 APR 22 PM 3:50
ROBERT R. DITOLIO
CLERK OF U.S. DIST. CT.
WD. OF TN-JACKSON

OZELLA WADLEY and JOSEPH
WADLEY,

Plaintiffs,

VS.

GRANGE MUTUAL CASUALTY
COMPANY,

Defendant.

No. 04-1276-T/An

ORDER ON MOTION TO DISMISS

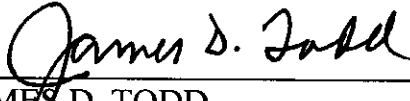
On November 8, 2001, the plaintiffs, Ozella Wadley and Joseph Wadley, filed an action in the Circuit Court of Henderson County, Tennessee, against Grange Mutual Casualty Company, seeking recovery under a homeowners insurance policy for losses sustained as a result of a fire which destroyed their home. The defendant removed the action to this Court on December 19, 2001, and the case was assigned docket no. 01-1377. The parties subsequently consented for the case to be transferred to then-Magistrate Judge J. Daniel Breen for final disposition.

On October 3, 2003, the plaintiffs moved for voluntary dismissal of the action without prejudice, pursuant to Fed. R. Civ. P. 41. Judge Breen granted the motion for voluntary dismissal on October 21, 2003 on the condition that, if the case was re-filed,


plaintiffs pay certain costs incurred by the defendant. Specifically, plaintiffs were instructed that if the case was re-filed they must first reimburse defendant for the \$150.00 filing fee incurred in removing the original action to this Court, plus any subpoena fees defendant was unable to recover due to the motion for voluntary dismissal having been filed only three days before the case was scheduled for trial.

Plaintiffs re-filed their action in this Court on October 20, 2004. Defendant has moved to dismiss, asserting that plaintiffs have not reimbursed defendant for its costs as previously ordered by Judge Breen. Plaintiffs have not responded to the motion to dismiss.

Notwithstanding their failure to respond to the motion to dismiss, the Court finds that plaintiffs should be given another opportunity to comply with Judge Breen's order. Accordingly, the defendant is hereby directed to file, within eleven days after the entry of this order, an itemization of the costs incurred. Within eleven days after the filing of that itemization, plaintiffs must file either an objection or proof that the costs have been paid. Failure to do so will result in the immediate dismissal of this action without further notice. IT IS SO ORDERED.



JAMES D. TODD
UNITED STATES DISTRICT JUDGE



DATE



Notice of Distribution

This notice confirms a copy of the document docketed as number 12 in case 1:04-CV-01276 was distributed by fax, mail, or direct printing on April 25, 2005 to the parties listed.

Stephen M. Milam
LAW OFFICE OF STEPHEN M. MILAM
113 S. Main St.
Lexington, TN 38351

Russell E. Reviere
RAINEY KIZER REVIERE & BELL
209 E. Main Street
Jackson, TN 38302--114

Carthel L. Smith
LAW OFFICES OF CARTHEL SMITH, JR.
85 E. Church Street
Lexington, TN 38351

Honorable James Todd
US DISTRICT COURT